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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
04/27/2020 1:11 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Changing one APD medical program rule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/15/2020 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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500 Summer St NE  
Salem, OR 97301

Filed By:  
Meorah Solar  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/26/2020

TIME: 10:00 AM - 11:00 AM

OFFICER: Meorah Solar

ADDRESS: No Physical Location due to  
COVID-19

By phone: (503) 934-1400 code  
2620494#

or (971) 673-8888 code 2620494#  
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Everyone has a right to know about  
and use DHS programs and services.  
DHS provides free help. Some  
examples of the free help DHS can  
provide are: sign language and spoken  
language interpreters, written  
materials in other languages, braille,  
large print, audio and other formats. If  
you need help or have questions,  
please contact Meorah Solar at (503)  
602-7545, 711 TTY, or  
meorah.a.solar@dhsosha.state.or.us at  
least 48 hours before the meeting.

NEED FOR THE RULE(S):

OAR 461-160-0620 needs to be amended because the Department is required to adjust its post-eligibility treatment of income deduction amounts as a result of this congressionally approved change. This permanent amendment keeps Oregon in line with current federal standards for Department Medicaid programs and changes in the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

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**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Document not yet published. July 2020 SSI and Spousal Impoverishment Standards will be relied upon once published.

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**FISCAL AND ECONOMIC IMPACT:**

The Department is unable to accurately estimate the fiscal impact of amending OAR 461-160-0620 on the Department and on clients because the 2020 MMMNA and community spouse monthly housing allowance are not yet known. Some clients will receive a slight reduction in their service liability; therefore, it would have a positive fiscal impact on clients and a negative fiscal impact on the Department. However, a portion of the increased liability amounts the Department collected as a result of the January 2020 COLA will be "corrected" by the increase in the MMMNA and community spouse monthly housing allowance in July. In other words, some clients were required to make increased service payments as a result of the 2020 SSA COLA but a subset of these clients will see a reduction of their service liability in July as a result of this amendment, assuming the MMMNA and housing allowance will increase.

The Department is waiting on a report that provides current data on the number of affected clients which is used to estimate the fiscal impact on the department. Once the report is generated and the new MMMNA and housing allowance are published, the Department can provide revised fiscal impact information to interested parties. The Department estimates that these amendments will have no fiscal impact on other state agencies, local government, and business including small business. There is no cost of compliance for small business. No other members of the public will be affected.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

see above under Fiscal and Economic Impact

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?**

No rule advisory committee was used for this rule change because it involves routine annual adjustments.

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**AMEND: 461-160-0620**

**RULE SUMMARY:** OAR 461-160-0620 about income deductions and client liability for long-term care services and waived services is being amended to update the minimum community spouse income allowance (Minimum Monthly Maintenance Needs Allowance or MMMNA) and the community spouse monthly housing allowance which are published by the federal government each year. This amendment keeps Oregon in line with current federal standards

for Department Medicaid programs and changes to the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

CHANGES TO RULE:

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

In the OSIPM program:¶

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.¶

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.¶

(3) Deductions are made in the following order:¶

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM program.¶

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.¶

(c) One of the following need standards:¶

(A) A \$64.11 personal needs allowance for an individual receiving long-term care services.¶

(B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.¶

(C) For an individual who receives home and community-based care:¶

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.¶

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.¶

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.¶

(A) Step 1 - Determine the maintenance needs allowance. \$2,113.75 is added to the amount over \$634.13 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$3,216.00, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.¶

(B) Step 2 - Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000) income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.¶

(C) Step 3 - If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.¶

(e) A dependent income allowance as follows:¶

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,113.75. To determine the income allowance of each eligible dependent:¶

(i) The monthly income of the eligible dependent is deducted from \$2,113.75.¶

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.¶

(B) For a case with no community spouse:¶

(i) The allowance is the TANF adjusted income standard (see OAR 461-155-0030) for the individual and eligible dependents.¶

(ii) The TANF standard is not reduced by the income of the dependent.¶

(f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.¶

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan.¶

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income (see OAR 461-001-0000).¶

(i) The individual's liability is determined as follows:¶

(A) For an individual receiving home and community-based care (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department or the home and community-based care facility each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.¶

(B) For an individual who resides in a nursing facility, the liability is the actual cost of services or the adjusted income of the individual, whichever is less. This amount must be paid to the facility each month as a condition of being eligible for nursing facility services.

Statutory/Other Authority: ORS 409.050, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 411.706

Statutes/Other Implemented: ORS 409.010, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 42 USC 1396r-5, 411.706, 42 CFR 435.725 - 435.735